Soton bin Bili & Anor v Khajijah binti Led & Ors

HIGH COURT (KUCHING) — CIVIL APPEAL NO 12–51 OF 2006–III
DAVID WONG J
29 APRIL 2008

Damages (Personal Injury or Death) — Personal injuries — Loss of earnings — Quantum of damages — Pre-trial loss of income — Computation of — Whether court should use statutory multiplier under s 28A of the Civil Law Act 1956

Damages (Personal Injury or Death) — Personal injuries — Pain and suffering — Whether award excessively inadequate — Whether wrong principles applied

Damages (Personal Injury or Death) — Personal injuries — Prosthesis — Deduction in cost — Whether should be allowed — Factors considered by court

This was an appeal by the appellant and cross appeal by the respondent against the decision of the sessions court in respect of a claim for personal injuries and damages suffered as a result of a road accident. The first respondent was the driver of a van whilst the second respondent was a passenger. The van collided with a Toyota Hilux driven by the first appellant coming from the opposite direction when the first appellant encroached onto the van's path of travel. As a result, the second respondent suffered personal injuries and was hospitalised immediately after the accident. After a full trial, the sessions court judge ('the SCJ') found that the accident was solely caused by the negligence of the first appellant and accordingly entered judgment against the appellants. The appeal by the first appellant concerned only the quantum of damages awarded for the cost of prosthesis, pre-trial loss of income and partial loss of future earnings, whilst the cross appeal by the second respondent, concerned the sum of RM99,000 awarded for pain and suffering which was argued to be grossly inadequate and the disallowance of the second respondent's claim for costs of a helper.

Held, allowing part of the appellants' appeal with costs and dismissing the respondent's cross appeal with costs:

(1) Whether or not a ¼ deduction for the cost of the prosthesis should be given were a matter of discretion on the part of the judge and the circumstance of each individual case. The SCJ exercised her discretion judiciously in not making the deduction. The court took into account the fact that the second respondent's inability to pay the prosthetist for the use of the prosthetic limb as a relevant factor in deciding whether the court should give a ¼ deduction (see para 7).

(2) The statutory formula found in s 28A(2)(d)(ii) of the Civil Law Act 1956 ('the Act') determines the manner of calculating pre-trial loss of income. The SCJ caused an overlap of multipliers or in the use of two multiplier periods which is not allowable under s 28A of the Act and had therefore erred in its computation. The correct and statutory multiplier is ten years (see para 13).

(3) With regards to the cross appeal, it was clear from the facts that the SCJ had thoroughly examined the cases which had relevant bearing to the instant case and was aware that there may be come overlapping of pain and suffering from the injuries suffered. In the circumstances, it was not shown that the SCJ applied a wrong principle of law and thus the request to change the award of RM99,000 was rejected. Further, the SCJ also not wrong in her finding that the second respondent did not need any helper based on the evidence of the prosthetist and the fact that the SCJ had provided valid reasons for her decision (see para 21).

[Bahasa Malaysia summary

Ini adalah rayuan perayu dan rayuan balas responden terhadap keputusan mahkamah sesyen berkaitan dengan tuntutan untuk kecederaan diri dan kerugian yang dialami akibat daripada kemalangan jalan raya. Responden pertama adalah pemandu van sementara responden kedua adalah penumpang. Van tersebut berlanggar dengan sebuah Toyota Hilux yang dipandu oleh perayu pertama yang datang dari arah bertentangan apabila perayu pertama memasuki laluan perjalanan ban tersebut. Akibatnya, responden kedua mengalami kecederaan diri dan dimasukkan dengan segera ke hospital selepas kemalangan tersebut. Selepas perbicaraan penuh, hakim mahkamah sesyen ('HMS') membuat penemuan bahawa kemalangan tersebut terjadi akibat daripada kecuaian perayu pertama sahaja dan oleh itu memasukkan penghakiman terhadap perayu-perayu. Rayuan oleh perayu pertama melibatkan hanya kuantum ganti rugi yang diawardkan untuk kos kaki palsu, kehilangan pendapatan sebelum perbicaraan dan sebahagian kehilangan pendapatan masa hadapan, sementara rayuan balas oleh responden kedua, melibatkan jumlah sebanyak RM99,000 yang diawardkan

untuk kesakitan dan penderitaan yang adalah dipertikaikan sebagai tidak mencukupi dan penolakan tuntutan responden kedua untuk kos penolong.

Diputuskan, membenarkan sebahagian rayuan perayu dengan kos dan menolak rayuan balas responden dengan kos:

(1) Sama ada atau tidak penolakan ¼ untuk kos kaki palsu harus diberikan adalah perkara di bawah budi bicara hakim dan hal keadaan setiap kes individu. HMS melaksanakan budi bicaranya secara kehakiman dalam tidak membuat penolakan. Mahkamah mengambil kira fakta bahawa responden kedua tidak boleh membayar pakar kaki palsu untuk kegunaan anggota palsunya sebagai faktor yang relevan dalam memutuskan sama ada mahkamah harus memberikan ¼ penolakan (lihat perenggan 7).

(2) Formula statut yang didapati dalam s 28A(2)(d)(ii) Akta Undang-Undang Sivil 1956 ('Akta tersebut') memutuskan cara pengiraan kehilangan pendapatan sebelum perbicaraan. HMS menyebabkan pertindihan pendarab atau dalam penggunaan dua tempoh pendarab yang tidak dibenarkan di bawah s 28A Akta tersebut dan oleh itu terkhilaf dalam pengiraannya. Pendarab yang betul dan menurut statut adalah sepuluh tahun (lihat perenggan 13).

(3) Berkenaan dengan tuntutan balas, ia adalah jelas bahawa fakta bahawa HMS telah secara teliti memeriksa kes-kes yang menyerupai kes ini dan sedar bahawa mungkin terdapat kesakitan dan penderitaan yang bertindih daripada kecederaan yang dialami. Dalam hal demikian, ia tidak ditunjukkan bahawa HMS telah mengaplikasikan prinsip undang-undang yang salah dan oleh itu permohonan untuk menukar award RM99,000 adalah ditolak. Selanjutnya, HMS juga tidak terkhilaf dalam penemuannya bahawa responden kedua tidak memerlukan penolong berdasarkan kepada keterangan pakar kaki palsu dan fakta bahawa HMS telah memberikan alasan yang sah untuk keputusan beliau (lihat perenggan 21).]

Notes

For cases on loss of earnings, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 738–744.

For cases on pain and suffering, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 808–814.

For cases on personal injuries in general, see 6 *Mallal's Digest* (4th Ed, 2007 Reissue) paras 514–879.

Cases referred to

Bujang bin Mat & Anor v Lai Tzen Hai & Anor [2004] 6 MLJ 376 (refd)
Cheng Bee Teik & Ors v Peter Selvaraj & Anor [2005] 4 MLJ 301 (refd)
Dirkje Pieternella Halma v Mohd Noor b Baharom & Ors [1990] 3 MLJ 103 (refd)
Fadzly bin Nor Rahim & Anor v Chang Foh Chin [2007] 6 MLJ 419 (refd)
Nagarajan Veerappan v Ananthan Parama Sivam & Anor [1989] 2 CLJ 1243; [1989] 2 CLJ (Rep) 153 (refd)
Sumarni v Yow Bing Kwong & Anor [2008] 1 MLJ 608 (refd)
Tan Kuan Yau v Suhindrimani [1985] 2 MLJ 22 (refd)
Tang Tiew Yong & Ors v Wong Jong Hoon & Anor [2002] 7 MLJ 420 (refd)

Legislation referred to

Civil Law Act 1956 ss 28A, 28A(2)(d)(ii)

Derbe Tang (Chew Jugah Wan Ullok & Co) for the appellants.
Sarbjit Singh Khaira (Khaira & Co) for the respondents.

David Wong J:

INTRODUCTION

[1] Before me is an appeal and cross appeal against the decision of the learned sessions court judge in respect of a claim for personal injuries and damages suffered as a result of a road accident.

[2] The brief facts of the case are these. On 9 September 1999 the second respondent (who was the second plaintiff in the court below) was a passenger in a van driven by the first respondent heading in the direction of Kuching via Tabuan Jaya. The van collided with a Toyota Hilux driven by the first appellant (who was the first defendant in the court below) coming from the opposite direction. The collision occurred when the first appellant encroached onto the van's path of travel. As a result of the accident the second respondent, who was then 35 years of age and operating a canteen earning RM65 per day, suffered personal injuries and was hospitalised immediately after the accident. The injuries sustained by the second respondent were as follows:

(a) Severe crush injury to left ankle and left foot.

(b) Compound grade III B supracondylar fracture left femur.

(c) Compound grade I fracture proximal shaft left femur.

(d) Closed fracture superior and inferior pubic rami.

(e) Fracture left patella.

(f) Laceration wound right inguinal region, 1 cm.

(g) Stiff left knee with range of movement up to 10–40 degrees.

[3] After a full trial, the learned sessions court judge found that the accident was solely caused by the negligence of the first appellant and accordingly entered judgment against the appellants.

[4] The appeal by the first appellant concerned only the quantum of damages awarded for the following:

(1) Cost of prosthesis: RM108,730;

(2) Pre-trial loss of income: RM115,115; and

(3) Partial loss of future earnings: RM114,720.

[5] As for the cross appeal by the second respondent, it concerned two items:

(1) The sum of RM99,000 awarded for pain and suffering; and

(2) The disallowance of second respondent's claim for costs of a helper.

APPEAL

[6] In respect of the cost of prosthesis of RM108,730, Ms Derbe Tang (Ms Tang) submitted that the learned sessions court judge had erred in not reducing the amount of RM108,730 by ¼ deduction for contingencies, vicissitudes of life and/or taking into account the accelerated payment. She relied on the case of *Cheng Bee Teik & Ors v Peter Selvaraj & Anor* [2005] 4 MLJ 301 and *Bujang bin Mat & Anor v Lai Tzen Hai & Anor* [2004] 6 MLJ 376. Whether or not a ¼ deduction should be given is a matter of discretion on the part of the judge and the circumstance of each individual case. Ms Tang in fact agrees with me on that principle of law. Mr Sarbjit Singh Khaira (Mr Khaira), counsel for the first respondent in his rebuttal submission set out the reasons why the learned sessions court judge did not make the ¼ deduction and they were:

(1) The foot needs to be changed every two years at the cost of RM880 per change.

(2) Socket needs to be changed at least once at the cost of RM800.

(3) Netting needs to be changed every six months at the cost of RM25 per change.

(4) The life span of Modular III is only six years.

[7] I cannot fault the learned sessions court judge's decision in not making the deduction as she had exercised her discretion judiciously. At this juncture, let me express my disappointment that the insurance company had not paid a single cent to the second respondent. I am fully aware that the judgment was only finalised on 19 October 2007 and there was an appeal. That in my view is not an excuse as the decision was delivered on the 1 December 2006 and the insurance company should have taken action to pay the second respondent whatever amount that they did not dispute, for example, the cost of prosthesis of RM108,730. The only dispute Ms Tang is making here is the non deduction of the ¼ for contingencies, vicissitudes of life and/or taking into account the accelerated payment. The insurance company could have made payment for the sum of RM81,547.50 which is an amount after a ¼ deduction. Insurance companies must realise that they have a corporate and moral duty to pay the insured as soon as possible. In the present case, the evidence showed that the second respondent could not pay PW7 the prosthetist for the use of the prosthetic limb and had to rely on the charity of PW7. In my view this is a factor which is relevant for me to decide whether or not this court should give a ¼ deduction.

[8] For the reasons stated above, I reject Ms Tang's submission on this point. I now come to the award of the pre trial loss of income and partial loss of future income. Ms Tang submitted that the learned sessions court judge was wrong and this was how she put it:

15. The learned sessions court judge assessed the RM115,115 pre-trial loss of income as follows (p 49 of judgment):

    15.1 Multiplicand: RM1,495 per month x 11 months a year [Note: The court held that the second plaintiff was only working/earning 11 months a year at that time.]

    15.2 Multiplier: 7 years [ie from 1999 (date of accident) up to 2006 (date of judgment).]

    15.3 Total: RM1,495 x 11 months x 7 years = RM115,115

16. The partial loss of future earnings of RM114,720 was awarded as follows:

    16.1 Multiplicand: RM956 x 12 months [Note:

    (a) The court held that the second plaintiff could still work and earn RM300 per month. Therefore: RM1,495–RM300 = RM1,195

    (b) The court deducted a further 20% as living expenses. Therefore: RM1,195–20% = RM956]

16.2Multiplier: 10 years

[Note: 55–35 (age of the second plaintiff in 1999)]

16.3 Total: RM956 x 12 months x 10 years = RM114,720

17. By way of illustration:

18. In all, the learned sessions court judge awarded a total period of 17 years to the second plaintiff for loss of earnings.

19. It is humbly submitted that the learned sessions court judge has erred in the computation of the multiplier as well as the multiplicand for the loss of earnings.

[9] The above contention is based on her interpretation of s 28A(2)(d)(ii) of the Civil Law Act and based on the statutory formula of s 28A (2)(d)(ii), the maximum number of years' purchase (the multiplier) to be applied cannot exceed the ceiling of ten years (ie 55–35 (age of the second respondent) and divided by two). And since the learned sessions court judge awarded a total of 17 years, she had erred. Further she submitted that since the amendment to the Civil Law Act 1956, there is no distinction between pre-trial loss of earnings and future loss of earnings. For this contention she relied on the case of *Dirkje Pieternella Halma v Mohd Noor b Baharom & Ors* [1990] 3 MLJ 103 where Gunn Chit Tuan SCJ held as follows:

> During the hearing before us Mr Gurbachan Singh, leading counsel for the appellant, agreed with us that since the amendment of the Civil Law Act 1984, on 1 October 1984, there is no distinction between pre-trial and post-trial loss of earnings. He agreed that as from that date loss of future earnings should be awarded in relation to the time when the plaintiff was injured that is, the date of accident or injury and a proper award for loss of future earnings made under s. 28A(2)(c) of the Civil Law Act 1956. In this case as the appellant was below the age of 30 years at the time when she was injured s. 28A(2)(d)(i) of the said Act therefore applies.

[10] The above principle case was followed in the case of *Tang Tiew Yong & Ors v Wong Jong Hoon Anor* [2002] 7 MLJ 420 and in calculating the multiplier the learned judge puts it this way:

> … the next question that must be determined is, what is the multiplier or number of years' purchase when assessing the damages for loss of future earnings to the second respondent who was 54 years old when he met with the accident on 23 July 1998? It will be recalled that the learned sessions court judge awarded the second

respondent 'pre-trial loss of earnings' over 20 months. It is the complaint of the appellants that the learned sessions court judge had erred in law when she did so as she failed to direct her mind to the provisions of s 28A(2)(d)(ii) of the Act which sets out the formula for calculating the number of years' purchase (or multiplier) where a person is between 31 and 54 years of age at the time when he is injured. It is the contention of the appellants that if the formula stated in s 28A(2)(d)(ii) is followed, then the number of years' purchase or the multiplier would only be six months ie, (55-54) divided by two = 1/2 or six months, and not 20 months as awarded by the learned sessions court judge.

… In this regard, I would also refer to *Nagarajan Veerappan v Ananthan Parama Sivam & Anor* [1989] 2 CLJ 1243; ([1989] 2 CLJ (Rep) 153) where KC Vohrah J (as he then was) took the view that after 1 October 1984, pre-trial loss of earnings no longer forms a head of claim. This is what the learned judge said:

> Pre-trial loss of earnings for claims arising under the pre-amendment law were and may be claimed as special damages (see *Murtadza v Mohamed Hassan v Chong Swee Pian* [1980] 1 MLJ 215) calculated from the date of accident to the date of trial.
>
> The provisions of s 28A(2), made in 1984, make no mention of this head of damages; and all relevant provisions for the purpose of calculating loss of future earnings refer to the age at the date of accident and not to the age at the date of trial as the figure. It seems to me therefore that there can be no separate head for pre-trial loss.

In a latter part of his judgment, when dealing with the question of whether the 'years' purchase' or multiplier under s 28A(2)(d)(ii) should be applied directly to the multiplicand or be applied indirectly to it through an annuity table, KC Vohrah J said (at p 1249 (p 159)):

> In fact in not allowing for pre-trial loss to be claimed as an item of special damages (as was explained earlier in the judgment) the damages allowable in respect of preamendment claims become subsumed in the damages that become due on the statutory formula leaving the defendant less damages than he would have got for pre-amendment claims.

I respectfully concur with what was said by His Lordship.

[11] Mr Khaira in his rebuttal submitted that s 28A Civil Law Act does not apply in this case as there was no total loss of future income. But when asked by me on what authority he relied on, Mr Khaira could not answer. With respect, his interpretation is in fact contrary to decided cases. (See *Looi Gnan Peng v Bay Tong Hai* [2005] 1 CLJ 685, *Sumarni v Yow Bing Kwong & Anor* [2008] 1 MLJ 608).

[12] I now come back to Ms Tang's contention by first looking at s 28A Civil Law Act 1956 which states as follows:

28 A Damages in respect of personal injury

(1) ...

(2) In assessing damages under this section —

(a) ...

(b) ...

(c) ...

(d) in assessing damages for loss of future earnings the Court shall take into account that —

(i) ...

(ii) in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time when he was injured, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time when he was injured and dividing the remainder by the figure 2.

[13] Looking at the plain words of s 28A Civil Law Act, I have no doubt that Ms Tang's contention is correct. What the learned sessions court judge did resulted in an overlap of multipliers or in the use of two multiplier periods which is not allowable under s 28A of Civil Law Act. Accordingly I find that the learned sessions court judge erred when she used the period of 17 years in calculating the second respondent's loss of earning. The correct and statutory multiplier is ten years.

[14] As for the contention that under s 28A of the Civil Law Act there is no distinction between pre trial loss and post trial loss, the recent case of *Sumarni v Yow Bing Kwong & Anor* appears to cast doubt on it. This is how James Foong Cheng Yuen JCA puts it (p 13):

Loss of earnings

It is necessary at the outset to clarify the meaning of loss of earnings and loss of future earnings which were used interchangeably in both the plaintiff's pleadings and the judgment of the High Court. It is my view that the former is classified as special damages and the latter as general damages — see *Ngooi Ku Siong & Anor v Aidi Abdullah* [1985] 1 MLJ 30. Loss of earnings is normally considered as a pre-trial loss. This is the actual amount of earnings lost by a plaintiff as a result of an accident caused by a defendant. In this instance, the plaintiff was not paid by her employer immediately after the accident though her contract with this employer has another six months to run. Instead she only received free board and lodging from the time she was discharged from hospital to the time when her work

permit expired. This was for a period of six months. She has claimed for this loss of earnings in her atatement of claim, and I believed that she was duly compensated a sum of RM2,100 for this category of loss by the sessions court and subsequently confirmed by the High Court. In my opinion, the courts below were correct in allowing this amount to the plaintiff for this category of loss.

Loss of future earnings

For loss of future earnings, it is a post-trial loss. It was decided by the Federal Court in *Ngooi Ku Siong & Anor v Aidi Abdullah* [1985] 1 MLJ 30 that:

> Future loss of earnings or loss of prospective earnings are awarded for real assessable loss ie loss that is capable of assessment at the date of the trial. It must be proved by evidence and not by mere speculation... there must be evidence of a real and substantial loss which must not be remote and speculative.

[15] Having read and analysed the cases on s 28A of the Civil Law Act, I am inclined to agree with what is stated in *Sumarni*'s case for reasons as stated by the learned judge. It should also be noted that in *Sumarni*'s case the issue whether one can have overlapping multipliers was not discussed. So applying the above principle to the present case, the second respondent is entitled to the following damages:

(i) Loss of earnings — RM115,115 calculated as follows:
7 years loss of future earnings [1999 (date of accident) to 2006 (date of judgment)] at the rate of RM1,495 per month x 11 months x 7 years;

(ii) Loss of future earnings — RM34,416 calculated as follows:
RM956 (RM1,495.00 — RM300 — 20% as living expenses) X 12 months X 3 years (the balance of the multiplier of 10 years — 7 years = 3 years) for the balance of the award for loss of future earnings, amounting to the sum of RM34,416;

(iii) The total award for loss of future earnings would be (RM115,115 + RM34,416) = RM149,531.

[16] I have not made any deduction for living expenses for the loss of earnings as this was never argued in the lower court and in Ms Tang's first submission dated 23 January 2008.

[17] To make this part of my judgment complete, I need to mention the recent case of *Fadzly bin Nor Rahim & Anor v Chang Foh Chin* [2007] 6 MLJ 419 which I have had a chance to read and found that the issues there are not the same as here; hence I find no assistance from it. A more relevant case is

A the Kuching High Court II's decision in Civil Appeal No 12–05 of 2007-II where the learned judge disallowed the overlapping of the multiplier periods.

CROSS-APPEAL

B **[18]** In respect of item 1, Mr Khaira firstly submitted that the learned sessions court judge erred in awarding RM99,000 for pain and suffering as the defendants' counsel had 'conceded to a minimum amount of RM150,000'. This submission, if one looks at the notes of proceedings, was made under a mistaken impression. Ms Tang had correctly pointed out that C there were two submissions given to the learned sessions court judge and in the second submission dated 2 November 2006 which is at pp 165 – 166 of the record of appeal, it clearly showed that the then counsel for the second appellant had submitted that the amount to be awarded should be RM75,000 and not RM150,000.

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[19] Secondly he submitted that the amount awarded was excessively inadequate and the proper award should be RM285,000. Ms Tang in her reply submission referred the court to the case of *Tan Kuan Yau v Suhindrimani* [1985] 2 MLJ 22 and quoted the following (pp 324–p 325): E

> Now, in an appeal on quantum of damages, it is essential in order to come to a conclusion to bear in mind certain principles which are well established. The appeal court is slow, indeed, disinclined to interfere with the judge's finding merely because the appeal court thinks that if the case had been before it in the first F instance a lesser sum would have been awarded. Azmi CJ (Malaya) (as he then was) giving the judgment of the Federal Court in *Topaiwah v Salleh* [1968] 1 MLJ 284 said that:
>
> > In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either G that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. (See *Flint v Lovell* [1935] 1 KB 354).
>
> H … it is for the appeal court to consider whether in the light of the circumstances of that case there is an erroneous estimate of the amount of the damage in that, either there was an omission on the part of the judge to consider some relevant materials, or he had admitted for purpose of assessment some irrelevant considerations. If the court is satisfied or convinced that the Judge has acted upon I wrong principle of law then it is justified in reversing; indeed, it is its duty to reverse the finding of the trial judge.

[20] I have no doubt that what is stated in the above quotation is the correct statement of law. The learned sessions court judge, prior to coming to

her decision, had thoroughly examined numerous cases which, in my view, had relevant bearing on the case at hand (see pp 17–27 of the judgment). She was fully aware that there may be some overlapping of pain and suffering from the injuries suffered. In concluding this was what she said:

> In the light of the above awards that I had made previously and after taking into account the pain and suffering endured by the second plaintiff through malunion of the fractured bones and subsequent skin grafting operations, as well as the loss of amenities as the result of below knee amputation, I consider a fair and reasonable compensation would be RM90,000.
>
> For the fracture of pubic rami and laparotomy and the possible onset of osteoarthritis and intestinal obstruction due to laparotomy, I consider RM20,000 would be fair and reasonable. After deducting 10% for the overlapping, the total award for general damage is RM99,000 (RM90,000 + RM20,000 -10%). I do so award.

[21] Mr Khaira with respect had not showed to me where the learned sessions court judge had applied the wrong principle of law in her deliberation and hence I reject the request to change the award of RM99,000.

[22] I now deal with the contention of Mr Khaira that the learned sessions court judge was wrong in not awarding costs of hiring a helper. Again the learned sessions court judge had considered this factor and made a finding that she did not need any helper based the evidence of PW7 the prosthetist.

> Court's question:
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> > With Modulla 111 and regular servicing, would Khatijah be able to get on life normally in the sense that she would not need care and able to do her house chore?
>
> A: Yes.

[23] Again I cannot fault the learned sessions court judge as she had provided valid reasons for her decision in not awarding any damage for the cost of hiring a helper.

ORDER OF THE COURT

[24] For all the reasons stated above, I make the following orders:

[25] In respect of the appellants' appeal:

(1) The appeal in respect of the costs of prosthesis is dismissed.

(2) The appeal in respect of the pre trial loss of income and partial loss of future earning is allowed.

(3) The amount of loss for future earning is reduced to the sum of RM149,531, particulars are as set out above.

(4) Cost is awarded to the appellants only on the basis that they had only been partially successful in their appeal.

[26] In respect of the respondents' cross-appeal, it is dismissed with costs (to be taxed unless agreed) to the appellants.

Cross-appeal dismissed with costs.

Reported by Augustine Soosay